

2013

Foreword: The Distinguished Life & Work of the Honorable John E. Simonett

Thomas H. Boyd

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

Recommended Citation

Boyd, Thomas H. (2013) "Foreword: The Distinguished Life & Work of the Honorable John E. Simonett," *William Mitchell Law Review*: Vol. 39: Iss. 3, Article 1.

Available at: <http://open.mitchellhamline.edu/wmlr/vol39/iss3/1>

This Prefatory Matter is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law

FOREWORD: THE DISTINGUISHED LIFE & WORK OF THE HONORABLE JOHN E. SIMONETT

Thomas H. Boyd[†]

There is no journey, no business however voluminous or difficult, that can take the book out of [his] hand; and yet it would be hard to find anyone who was more truly a man for all seasons and all men, who was more ready to oblige, more easily available for meeting, more lively in conversation, or who combined so much real wisdom with such charm of character.

*Desiderius Erasmus*¹

I think of him, really, as a man of letters, and there aren't too many of them around anymore. . . . He has a very rich intellectual life. . . . He is always reading, always writing, always thinking.

*Honorable Anne V. Simonett*²

The Honorable John E. Simonett passed away on July 28, 2011, at the age of eighty-seven. He was an exceptional trial lawyer, a widely respected associate justice of the Minnesota Supreme Court, and a true gentleman.

Eight months following his passing, on March 23, 2012, his family, friends, fellow trial lawyers, judicial colleagues, law students, and many other fond admirers gathered at William Mitchell College of Law to celebrate John Simonett's distinguished life and work.³ The essays and articles published in this Issue of the *William*

[†] Shareholder, Winthrop & Weinstine, P.A., Minneapolis, Minnesota. B.A., M.A., and J.D., University of Iowa.

1. Letter from Desiderius Erasmus to Guillaume Budé (Sept. 1521), in 8 COLLECTED WORKS OF ERASMUS 297 (R.A.B. Mynors trans., Univ. of Toronto Press 1988) (footnote omitted) (describing Thomas More).

2. Donna Halvorsen, *John Simonett's Legacy Is One of High Wit and Deep Wisdom: He's Retiring from State Supreme Court This Month*, STAR TRIB., June 6, 1994, at 01B, available at 1994 WLNR 4125704.

3. The program was presented by the Minnesota Supreme Court Historical Society, Minnesota CLE, Minnesota District Judges Association, the Civil Litigation

Mitchell Law Review are worthy extensions of the marvelous spirit and rich substance of that very special program.

It is a privilege and honor to provide this foreword to those writings.

* * *

John Edward Simonett was the son of Edward and Veronica Simonett. He was born in Mankato, Minnesota, in 1924, and he and his sister, Mary, grew up in Le Center—a place he referred to as “an inland town.”⁴ The town’s baseball team was known as the Le Center Quick Steps, and he was a great fan of the Quick Steps. His passion for the game and for his team showed through in later years in his legendary rendition of Ernest Thayer’s poem, *Casey at the Bat*.

Justice Simonett had fond memories of small-town life in Le Center. In a speech at the Le Center Centennial celebration, he recalled

the sheer delight of band concerts in the town square. It was nighttime. The band was playing and we kids would run barefoot in the grass, playing tag in the dark shadows. Just running. Just for the fun of it. And when the band stopped playing, the grownups in the cars parked in the street would honk their horns.⁵

He came from a modest home and grew up during the Depression. His mother, who he said “kept us safe and secure at home,” had a love for books and theater, which she imparted to her son. When she washed the dishes, he would overhear her declaim Lady Macbeth’s famous line, “Out, damned spot.”⁶

Section and Appellate Practice Section of the Minnesota State Bar Association (MSBA), Greene Espel PLLP, and William Mitchell College of Law. Professor Mike Steenson and Lynette Fraction of William Mitchell College of Law, Peter Berge of Minnesota CLE, and Renee Anderson of the Minnesota Supreme Court Historical Society were particularly instrumental in putting on the program.

4. DVD: Oral History with the Honorable John E. Simonett (Minnesota Supreme Court Historical Society 2009) [hereinafter Simonett Oral History]. The author had the pleasure of participating with the Honorable Paul Anderson in this oral history interview of Justice Simonett. The content of that memorable conversation forms the basis for much of the content of this foreword regarding Justice Simonett’s background.

5. John E. Simonett, Remarks at the Centennial Dinner, Le Center, Minnesota (July 21, 1990), in *THE JUDICIAL CAREER OF JOHN E. SIMONETT* ch. 3, at 2 (Marvin Roger Anderson & Susan K. Larson eds., 1998).

6. John E. Simonett, Introduction, in *THE JUDICIAL CAREER OF JOHN E.*

His father worked many different jobs: he sold insurance, had a beer route, and was chief of the volunteer fire department. He took whatever work he could find, including a job as a tombstone salesman for the Delano Granite Company. Justice Simonett said his father would read the newspaper and, when he came to the obituaries, “off he’d go to try and sell a monument.”⁷

It was in Le Center that he came under the tutelage of Sister Helen Vincent in the sixth grade. She taught the sixth graders “about the dangers of scrupulosity.”⁸ She also told them, “[Y]ou must live in the world,” and “remember that if you cannot avoid the occasions of sin, you must make them into occasions of grace.”⁹

He naturally gravitated towards public speaking and was a regular participant in the local declamatory contests. As a youth, he was selected to recite the Gettysburg Address in a Memorial Day program. Of course, he was expected to recite it from memory. Here was young John Simonett memorizing one of America’s greatest pieces of writing by one of America’s greatest men. This transcended a mere exercise in rote memorization, as he absorbed the greatness that flowed from Abraham Lincoln’s pen.

Justice Simonett grew up reading the *Le Center Leader*, which was the local newspaper that reported on the fortunes and woes of his beloved Quick Steps. The *Leader* also reported on the prominent lawyers in Le Center, which was and is the county seat of Le Sueur County. These lawyers spoke at the public ceremonies and took leading roles on the public stage of that small town. They were the stars of their profession and the leaders in their community. These attorneys made an impression on the young man.

He enrolled at St. John’s in Collegeville, Minnesota, but his college education was interrupted by service in the United States Army during World War II. Following his discharge, Justice Simonett returned to St. John’s, where his love of literature and public speaking were nurtured. He had a great Shakespeare professor whose impact on this student was evident. He also met his future wife, Doris Bogut, when his debate team from St. John’s

SIMONETT, *supra* note 5, at ii.

7. Simonett Oral History, *supra* note 4.

8. John E. Simonett, Professionalism and the Occasions of Sin (July 24, 1992), in THE JUDICIAL CAREER OF JOHN E. SIMONETT, *supra* note 5, ch. 3, at 3. “Some people are too conscientious. They are so worried about being good that they see sin where there isn’t any.” *Id.*

9. *Id.* at 6.

took on the team from the College of St. Benedict.

While he was at St. John's, Justice Simonett and his classmates organized a pre-law club with the help of a prominent lawyer and Republican named Fred Hughes from St. Cloud, Minnesota. Fred Hughes served as chairman of the board of lay trustees at St. John's and was later appointed to serve as a Regent of the University of Minnesota. He would have a profound influence on John Simonett's life.

Justice Simonett graduated from St. John's *magna cum laude* in 1948 and then went on to the University of Minnesota Law School, where he continued to distinguish himself. He served as president of the *Minnesota Law Review*¹⁰ and graduated from the Minnesota Law School with Order of the Coif honors in 1951.

* * *

It might have been assumed that John Simonett was destined to practice in one of the well-known Twin Cities law firms. Indeed, he interviewed at a large firm in downtown Minneapolis when he was still in law school, and he had a very nice time in the interview. But, when he was leaving the firm's office at the end of the day, it was raining and everyone was rushing frantically from the elevators out to the packed streets. It was too crowded and too confining. At that moment he thought, "No, I want more space."¹¹

Fred Hughes, that prominent lawyer from St. Cloud, suggested that he contact Gordon Rosenmeier, who had a solo practice in Little Falls, Minnesota. Mr. Rosenmeier was a legend then, and now, as an extraordinarily intelligent, shrewd, and savvy state legislator who is said to have essentially ran the Minnesota Senate for decades. He served in the Minnesota Senate for thirty years and was a man to see to get things done in the legislature.¹²

John and Doris Simonett drove up to Little Falls to meet

10. His fellow members included many who would go on to distinguished careers, including the Honorable Donald Alsop, who would be appointed to the United States District Court; Erwin Goldstein, a highly regarded tax expert who practiced with Faegre & Benson; Jerome Simon, who formed the great St. Paul law firm of Maun & Simon; John Trenti, who is a highly regarded lawyer in Virginia, Minnesota; and Willard Boyd Jr., who served as president at the University of Iowa. John E. Simonett, Address to the Minnesota Law Review (Apr. 11, 1986), in THE JUDICIAL CAREER OF JOHN E. SIMONETT, *supra* note 5, ch. 3, at 1.

11. Simonett Oral History, *supra* note 4.

12. ROBERT LATZ, JEWES IN MINNESOTA POLITICS: THE INSIDE STORIES 88-89 (2007).

Gordon Rosenmeier, and before they left Mr. Rosenmeier gave the young man a title abstract to examine as “a kind of test.” Justice Simonett had never seen a title abstract before. He took the abstract back home and went to work on it. In his letter to Mr. Rosenmeier, in which he enclosed the results of his examination of the title, he wrote: “It has been a good experience for me. There is much for me to learn—as the memo no doubt indicates.”¹³ He got the job, and they practiced law together for twenty-nine years.

In the early days of their practice, Gordon Rosenmeier would look over what Justice Simonett wrote—and that included everything, whether it was a pleading, a motion, letters to clients or opposing counsel, or even a note to a lumber company about a bill. Mr. Rosenmeier would revise the young lawyer’s writing before he was allowed to send anything out from their office. He learned from Gordon Rosenmeier “to be precise, to be careful, to be accurate.”¹⁴

* * *

John and Doris Simonett raised a family and immersed themselves in life in Little Falls. Located on the banks of the Mississippi River and boyhood home to Charles Lindbergh, this idyllic town was also the county seat for Morrison County. It was the perfect place for John Simonett and his family.

The Simonetts were married for fifty-nine years and raised six wonderful children: Anne, Mary, John, Martha, Paul, and Luke. They were also blessed with eight grandchildren. Justice Simonett was a wonderful family man who spent time with his children. He had made a decision that he would not be the stereotypical father of the 1950s and 1960s who was entirely consumed by work and was only a figurehead at home. He was always a part of his children’s lives, taking them fishing and to the ice cream stand where everyone—even the family’s dog—would get their own cone. He was home as much as he could be. Doris Simonett recalls how he would sit in a chair at home, writing on a yellow legal pad, with a leg slung over the armrest while one of their children played

13. Letter from John E. Simonett to Gordon A. Rosenmeier, Minn. State Senator (Apr. 19, 1951), in *THE JUDICIAL CAREER OF JOHN E. SIMONETT*, *supra* note 5, ch. 1.

14. Simonett Oral History, *supra* note 4.

underneath. When they left home to attend college, he wrote his children letters every week.

His daughter, the Honorable Martha Simonett of Minnesota's First Judicial District, has written a beautiful essay that is included in this Tribute. She describes Justice Simonett's deep attachment to Little Falls and Morrison County, and writes of her father's character, which was so well suited for practicing law in a place where he could always make sure he was home for dinner with his family—even if it meant going back to the office afterwards to work late into the evening. He was a man who knew what really mattered.

* * *

Justice Simonett became one of the great trial lawyers of his generation—a generation that the Honorable Sam Hanson has called Minnesota's "greatest generation of trial lawyers."¹⁵

He had a captivating personality and a nearly mesmerizing way of speaking. Yet he was understated. He had presence, and he naturally commanded respect, but he was friendly and had a measured ease about himself that put others around him at ease. He was immediately credible and trusted. When he picked juries, he would try to find out if they liked his client; and if they did not like the client, then he would get the jurors to like his client's lawyer.¹⁶ That was hardly fair.

Justice Simonett's skills as a trial lawyer were widely admired, and his reputation as one of the very best courtroom attorneys went far beyond Morrison County and Minnesota's Seventh Judicial District. He tried cases all over the state against the other giants of the trial bar. He was a charter member of the American Board of Trial Advocates.

Richard Pemberton—himself an exceptional trial lawyer who tried many cases with and against John Simonett—and Carrie Weber, an able student at William Mitchell, have written a

15. Hon. Sam Hanson, Remarks at the Minnesota Supreme Court Historical Society's Tribute to the Honorable Robert J. Sheran (Nov. 13, 2012). In addition to Justice Simonett of Little Falls and Chief Justice Sheran of Mankato, other distinguished members of this greatest generation of trial lawyers included Arthur Geer, Philip Neville, and Patrick McGough, of Minneapolis; Richard Kyle, Sr., Charles Murnane, and Solly Robins of St. Paul; Sid Gislason of New Ulm; and Justice Simonett's good friend, Richard Quinlivan of St. Cloud, just to name a few.

16. Simonett Oral History, *supra* note 4.

wonderful article as part of this Tribute that describes some of John Simonett's trials and the impact those cases have had on the development of Minnesota law.

As a trial lawyer, John Simonett was greatly respected by his fellow attorneys, as well as the trial bench, for his amazing intellect, extraordinary yet understated skills, unfailing civility, and steady and easy focus on what was really relevant and deserving of attention at trial. He viewed a lawyer's focus on what is truly relevant to be "an aspect of competence" and believed that this baseline of competence is fundamentally tied to professionalism, writing that "[c]ompetence breeds respect, and respect breeds civility."¹⁷

Justice Simonett was a brilliant law student, lawyer, and jurist because he had a deep understanding of the law—not just what the law was, but why and how it had developed to its present form. And he sought to understand people just as well and as deeply as he understood the law. As Richard Pemberton has pointed out, he was ever curious about the nature of people. That curiosity made him an exceptional lawyer and an exceptional person.

* * *

The Simonetts lived next door to the Rogosheskes in Little Falls. Governor Luther Youngdahl had appointed Walter Rogosheske to the District Court in Morrison County, and Governor Elmer L. Andersen later appointed him to the Minnesota Supreme Court. When Justice Rogosheske decided to retire from the court, he and others convinced Justice Simonett to apply for the position.

He was invited to interview with Governor Al Quie and his advisors, who included none other than Fred Hughes of St. Cloud. As was apparently his practice with all prospective appointees, Governor Quie asked Justice Simonett, "How would you define love and justice?"¹⁸ The governor must have liked the response because he made the appointment, and Justice Simonett took his place on the court in the "Little Falls seat."

It is highly fitting that Governor Quie's remarks during the March 23, 2012, program honoring Justice Simonett are

17. John E. Simonett, *The Growing Irrelevance of Relevance*, BENCH & B. MINN., Aug. 1992, at 11, 13.

18. Simonett Oral History, *supra* note 4.

republished in this Issue. Governor Quie has served the State of Minnesota so well in so many ways, not the least of which has been his great leadership on merit selection in the judicial appointment process, and his notable contribution to Minnesota's judiciary through his appointment of John Simonett to the Minnesota Supreme Court.

Justice Simonett served on the Minnesota Supreme Court for fourteen years—from 1980 to 1994. During that time, he wrote a total of 423 times: 355 majority opinions; 24 dissents; 35 concurrences; and 9 instances in which he concurred in part and dissented in part.¹⁹ As these numbers show, he was a productive and efficient member of the court.

He was also a wonderful colleague to his fellow members of the Minnesota Supreme Court. This Tribute includes the transcript of the wonderful program that Justice Paul Anderson moderated on *Justice Simonett & the Art of Judging*, in which the Honorable Esther Tomljanovich and the Honorable Alan Page describe the respectful manner in which Justice Simonett dealt with his fellow justices, his charm and wit, and his skills as an exceptional writer.

At times, the court needed to take a difficult and challenging issue and have it distilled to a coherent and compelling piece of writing. It is said that former Chief Justice Sandy Keith knew he could always go to Justice Simonett, who would be able to turn something out in short order that would be just right to enable the justices to work through their deliberations.

Former law clerk Richard L. Pemberton Jr. has written that Justice Simonett “exemplif[ied] in his opinions how to approach legal issues logically and comprehensively, and also with brevity and grace of style.” Justice Simonett’s writings for the court serve as a “guide to lawyers who understand that knowledge of and respect for the history of the common law is both a tool to persuade and an attribute that makes the practice of law a profession, not just a job.” His opinions are characterized by their “eloquence, scholarship, fairness, discretion, and careful craftsmanship.”²⁰

In his opinions for the court, Justice Simonett had a way of cordially inviting the reader along to see how the court decided the

19. *Summary of Opinions by John E. Simonett*, in THE JUDICIAL CAREER OF JOHN E. SIMONETT, *supra* note 5, ch. 4.

20. Richard L. Pemberton, Jr., *Justice John E. Simonett's Legacy of Wisdom and Common Sense: A Defense Lawyer's Perspective*, MINN. DEF., Summer 1995, at 2, 10.

case. For example, the issue in one case before the court was whether the operator of a commercial parking ramp owed a duty to a ramp customer to protect her from assault by a trespasser. He stated the issue, and he then indicated, “We think so”²¹ He seemed to invite the reader along as if to say, “We think so—and here’s why we think so.” He then deftly reviewed the facts and explained with ease the manner in which the law applied to the case.

Justice Simonett authored many opinions in which he brought organization and structure to the analysis of an issue or area of the law that had been addressed in a somewhat fragmented way in prior case law. Through those opinions, he advanced the development of the law by pulling together the earlier precedents into a sensible framework and bringing order to that area of jurisprudence. Often, he went beyond this and provided practical assistance in the form of jury instructions that reflected his analytical organization. His skill in this regard is seen in the concurrence he wrote to the majority’s decision in *Florenzano v. Olson*,²² which the *Minnesota Civil Jury Instruction Guides* describes as “significantly clearer than the main opinion in the case.”²³

* * *

Justice Simonett demonstrated that he was an exceptional legal scholar throughout his career. As noted, he was a distinguished law student at the Minnesota Law School and president of the *Minnesota Law Review*. When he was a lawyer in private practice in Little Falls, he published an influential article on the use of *Pierringer* releases and called upon the Minnesota Supreme Court to endorse these types of releases²⁴—which, of course, it did.²⁵

Later, as a member of the Minnesota Supreme Court, Justice

21. *Erickson v. Curtis Inv. Co.*, 447 N.W.2d 165, 166 (Minn. 1989); *see also* *Sayers v. Beltrami Cnty.*, 481 N.W.2d 547, 552 (Minn. 1992); *Rieman v. Joubert*, 376 N.W.2d 681, 684 (Minn. 1985); *Burgraff v. Aetna Life & Cas. Co.*, 346 N.W.2d 627, 630 (Minn. 1984).

22. 387 N.W.2d 168 (Minn. 1986).

23. 4 Michael K. Steenson & Peter B. Knapp, *MINNESOTA PRACTICE: JURY INSTRUCTION GUIDES-CIVIL* 555 (5th ed. 2006) (citing *Florenzano*, 387 N.W.2d at 176–79 (Simonett, J., concurring)).

24. John E. Simonett, *Release of Joint Tortfeasors: Use of the Pierringer Release in Minnesota*, 3 WM. MITCHELL L. REV. 1 (1977).

25. *Frey v. Snelgrove*, 269 N.W.2d 918, 922 (Minn. 1978) (en banc).

Simonett's contributions to the development of Minnesota's common law was vast and multifaceted. Professor Mike Steenson of William Mitchell College of Law has written an excellent article analyzing Justice Simonett's opinions involving the law of torts, which may be the field in which Justice Simonett had the most profound influence.

Justice Simonett wrote an introduction to a collection of essays on the Minnesota Constitution published in the *William Mitchell Law Review*.²⁶ Justice Paul Anderson, who has himself published on this subject, has described the profound impact that Justice Simonett's prescient views have had in triggering the interest, exploration, and development of the potential role of once-dormant state constitutions.²⁷

This Issue of the *William Mitchell Law Review* is particularly rich in the exceptional treatment that is given to Justice Simonett's constitutional jurisprudence. Dean Robert Stein, the distinguished professor and former dean of the University of Minnesota Law School, has provided a fine examination of Justice Simonett's federal and state constitutional jurisprudence. The Honorable Harriet Lansing, whose remarkable service as a Ramsey County District Judge and one of the original and longest-serving members of the Minnesota Court of Appeals is well known to all, has written a very thoughtful essay on Justice Simonett's constitutional wisdom. And Randall Tietjen, an eminent scholar and an attorney with the Robins, Kaplan, Miller & Ciresi law firm, has provided a wonderful assessment of Justice Simonett's constitutional decision making.

Justice Simonett's particular influence over how the Minnesota Constitution should be viewed is evidenced in a very tangible way in the public space adjacent to the Minnesota Judicial Center—where excerpts from the Minnesota Constitution's Bill of Rights are chiseled into the wall to signify the lasting and vital importance of those promises to this state's citizens. Those words were placed there at Justice Simonett's suggestion.

* * *

26. John E. Simonett, *An Introduction to Essays on the Minnesota Constitution*, 20 WM. MITCHELL L. REV. 227 (1994).

27. See Paul H. Anderson & Julie A. Oseid, *A Decision Tree Takes Root in the Land of 10,000 Lakes: Minnesota's Approach to Protecting Individual Rights Under Both the United States and Minnesota Constitutions*, 70 ALB. L. REV. 865, 922–24 (2007).

Justice Simonett had a style of speaking—a change-up in his delivery and the way he raised and lowered his rich baritone voice—that left you hanging on every word. He wrote the same way. He got to the point, but without being rushed. He was concise and efficient, but not overly direct. To say that he could turn a phrase is a monumental understatement. He had a homespun style, but he was also intelligent and literary—a bit of a cross between Garrison Keillor and Oliver Wendell Holmes Jr.

Justice Simonett wrote and published numerous articles on a variety of topics that are wonderfully written, and are both intriguing and provocative, as reflected by some of the titles: *Meditation on the Limits of Law*,²⁸ *Forensic Rhetoric and Irving Younger*,²⁹ *The Growing Irrelevance of Relevance*,³⁰ *The Use of the Term “Result-Oriented” to Characterize Appellate Decisions*,³¹ *A Corporation’s Soul*,³² and *Civility and “Generalized Reciprocity.”*³³ Each of these pieces deserves careful attention to their style as well as their content.

Of all his writings, I believe the three short articles that Justice Simonett published in the American Bar Association Journal (ABA Journal) in the 1960s are his masterpieces. They are short—each just three pages—and they are classics. They illustrate Justice Simonett’s writing style and voice at its best.

He published the first of these three articles after he had been practicing law in Little Falls for a little more than a decade. In *The Common Law of Morrison County*,³⁴ he sought to cure the inattention that had been paid to the “distinctive common law” that has developed and grown in every corner of the country, as “[e]ach day new precedents are being set down in every county by real estate agents, bankers, justices of the peace, constables, auction sale clerks, notaries public and other prominent jurists” who have gradually developed the popular “common law,” such as, “[N]o

28. John E. Simonett, *Meditations on the Limits of Law*, 2 J.L. & RELIGION 1 (1984).

29. John E. Simonett, *Forensic Rhetoric and Irving Younger*, 73 MINN. L. REV. 805 (1989).

30. Simonett, *supra* note 17.

31. John E. Simonett, *The Use of the Term “Result-Oriented” to Characterize Appellate Decisions*, 10 WM. MITCHELL L. REV. 187 (1984).

32. John E. Simonett, *A Corporation’s Soul*, BENCH & B. MINN., Sept. 1997, at 34.

33. John E. Simonett, *Civility and “Generalized Reciprocity”*, BENCH & B. MINN., Feb. 2003, at 27.

34. John E. Simonett, *The Common Law of Morrison County*, 49 A.B.A. J. 263 (1963).

legal document signed with a ball-point pen is legal.”³⁵ “It is fitting, I think, that Morrison County leads the way now, as it has so often in the past, in th[is] field of jurisprudence. Justice Holmes observed that the life of the common law is experience, not logic. Undoubtedly he had Morrison County in mind.”³⁶ The article was a great success. It spoke to practicing lawyers and was actually cited in a journal of anthropology.³⁷

The second installment of Justice Simonett’s ABA Journal trilogy is entitled, *The Trial as One of the Performing Arts*.³⁸ As the title suggests, the article is a natural offshoot of his love of theater and performance, and reflected his view of lawyers and the courtroom as part of the dramatic tradition:

Both stage and courtroom contain the stuff of drama: fleeting inattention and then the maimed body, both irrevocable; the search for truth midst conflicting claims; lives of quiet desperation no longer quiet but much more desperate; the lure of money, sex, love, violence and ambition. . . .³⁹

. . . .

[B]oth the playwright and the lawyer deal in words and share a keen appreciation of their elusiveness and power. . . .⁴⁰

. . . .

The lawyer may drink as deeply, but he had best remain sober; otherwise, as Hamlet says, “[T]he judicious grieve.” Cases of indecent exposure should, in court, be decently exposed.⁴¹

Justice Simonett’s third article in his classic trilogy is entitled, *The Footnote as Excursion and Diversion*,⁴² in which he expressed astonishment at how “little attention has been given the footnote.”⁴³

While citations of authority are necessary, the problem remains where to put them. There is really no decent

35. *Id.* at 263.

36. *Id.*

37. Simonett Oral History, *supra* note 4.

38. John E. Simonett, *The Trial as One of the Performing Arts*, 52 A.B.A. J. 1145 (1966).

39. *Id.* at 1145.

40. *Id.* at 1146.

41. *Id.*

42. John E. Simonett, *The Footnote as Excursion and Diversion*, 55 A.B.A. J. 1141 (1969).

43. *Id.* at 1141.

place to put a citation so it will be out of the way and yet readily available. The best solution is the bottom of the page, for it keeps the citation in peripheral view but out of the text so that it will not be distracting to the flow of thought. The rub, however, is that the footnote, in removing one form of distraction, creates another. While the reader knows that what is at the foot of the page is presumably not as important as what is in the text, there is something tempting, irresistibly inviting, about the asterisk or offset digit. It flags attention, a momentary hesitation follows, the eye drops down to the foot of the page, and then, of course, all is lost. After following the cul-de-sac to its end, the reader returns to the main road, backtracks to regain his bearings, then proceeds on past the footnote to the next one. This is one step down for every three steps forward. One never quite gets into any one gear.⁴⁴

This interactive piece is thoroughly entertaining, as it has the reader constantly moving from the text to the footnotes, and then back again, as if he or she is watching a tennis match. Few writers can take a topic as dry as footnotes and breathe such life and fun into the subject.

These three articles must be read and should be reread. And likewise, it is worth reading anything and everything else written by Justice Simonett. You will enjoy yourself, and it will make you a better writer.

* * *

Several years ago, Justice Paul Anderson and I had a wonderful interview with Justice Simonett in which we spoke of many things, including his talent as a wonderful writer. Justice Anderson asked him something that I was just dying to ask: "Tell us, how are you able to write so well?" Justice Simonett sat thoughtfully for a moment, and then he said: "Nobody knows." Well, that was certainly disappointing. Our hopeful expectation that he could impart some magic formula—as unreasonable as such an expectation could be—must have been evident in our faces. In order to give us something to work with, he reminded us that he had done a lot of reading—he was a lifelong devoted reader—and that his reading had a profound influence on him as a writer.

44. *Id.* at 1141–42 (footnotes omitted).

Indeed, Justice Simonett was a lifelong reader who had a deep fondness for language, books, and ideas. He read great literature: the classics, history, biography, and autobiography, as well as the law. His writings—both his opinions and his non-judicial work—reflect how well read he was. His love of words and ideas came from his earliest influences—and endured and flourished throughout his life.⁴⁵ Throughout his entire life, he read widely, he observed keenly, he thought deeply, and he wrote perceptively.

The Honorable Kevin G. Ross of the Minnesota Court of Appeals, who is himself a truly gifted writer and who, prior to going on the bench, had the good fortune of practicing law with Justice Simonett, has written a marvelous analysis of Justice Simonett's writing style that is included in this Tribute. While we may never be able to equal Justice Simonett's extraordinary skills as a writer, Judge Ross has provided us with at least a glimmer of hope by laying out some fundamental guidelines for effective writing.

* * *

When you met John Simonett, you just knew he was a great trial lawyer. That was what the Honorable Douglas P. Anderson, now a district judge in Morrison County, thought when he first spoke with him over the phone as a third-year law student at William Mitchell. He would become a young associate at Rosenmeier & Simonett in Little Falls. What it must have been like to be a brand new lawyer entering the profession to practice law with these two giants? Judge Anderson has written a wonderful essay that is published as part of this Tribute describing the many kindnesses he received and the lifelong lessons he learned when he had the good fortune to start out in practice with John Simonett. As Judge Anderson notes, this towering member of the trial bar was also a kind and wise mentor to new lawyers.

While on the Minnesota Supreme Court, Justice Simonett was a mentor and friend to a special kind of associate known as the law

45. Several years ago, I attended the Appellate Practice Section of the MSBA's annual meeting, at which Justice Simonett gave a wonderful after-dinner talk. His remarks were based entirely on a handful of lines from a few books he brought from his library—lines on pages, the numbers of which he had jotted down in the back page of the books decades earlier when he first read these books. He had no prepared text or notes—just the page numbers, the words underlined on those particular pages, and the ideas those words rekindled when he read them again.

clerk. Twenty-three newly graduated lawyers had the opportunity to spend one year clerking for Justice Simonett. As Diana Young Morrissey and James Sheehy have shared as part of this Tribute, the experience of serving as Justice Simonett's law clerk was a wonderful learning experience—a time of rigorous analysis applied to real life and particularly challenging legal questions. In working with “Judge” Simonett, they gained an appreciation for the law as a profession that, while demanding, can and should be enjoyed. They also came to appreciate the importance of life beyond work.

When Justice Simonett retired from the Minnesota Supreme Court in 1994, he decided to return to practicing law. Rather than joining a large firm where he could easily command the highest of billing rates and the most sought-after clients, he instead chose to join a smaller firm that was relatively new and was largely made up of young attorneys. Larry D. Espel, one of the founding partners of Greene Espel, has written a wonderful reflection on behalf of himself and his colleagues who had the wonderful experience of practicing with Justice Simonett after he retired. Just as he had been when he practiced at Rosenmeier & Simonett, he was a wonderful partner and colleague at Greene Espel and a special mentor to their young lawyers.

* * *

In addition to the many other flattering comparisons that he inspired, the Honorable John E. Simonett has been described as a blend of Atticus Finch and Will Rogers. While there are similarities, he was one of a kind. He was an original through and through, with his signature bow tie, his wry wit, his uncanny insights, his brilliant intellect, and, of course, his unique voice—both spoken and written. As his daughter Anne said, he was indeed “a man of letters” who had a deep love of books, ideas, and writing. Further, as Richard Pemberton observed, he had a wonderful curiosity about and sincere interest in people. And like Thomas More, Justice Simonett was “truly a man for all seasons and all men” who relished personal interaction and “who combined so much real wisdom with such charm of character.”

His charm and wisdom are evident in the lines from one of the many essays he wrote—words that serve as gentle and abiding inspiration that every attorney should take to heart: “[A] narrow mind and a pinched heart make for a poor lawyer. Although law is

2013]

FOREWORD

681

absorbing and demanding, the good lawyer understands the importance of family and friends and time for relaxation, of time for poetry and poker.”⁴⁶

46. John E. Simonett, *Rules for Practice in General*, BENCH & B. MINN., July 1994, at 30, 31.